

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Arthur Albano	Team: Squad #4	CCRB Case #: 201600583	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/20/2016 8:30 PM	Location of Incident: Sedgwick Avenue and Hall of Fame Terrace	Precinct: 46	18 Mo. SOL 7/20/2017	EO SOL 7/20/2017	
Date/Time CV Reported Wed, 01/20/2016 8:42 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 01/20/2016 8:42 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Johnny Chalen	09575	947694	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Nicholas Kourounis	28949	954029	046 PCT
2. POM Jasen Perez	10775	949470	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Johnny Chalen	Abuse: PO Johnny Chalen stopped § 87(2)(b)	
B.POM Johnny Chalen	Abuse: PO Johnny Chalen frisked § 87(2)(b)	
C.POM Johnny Chalen	Discourtesy: PO Johnny Chalen spoke discourteously to § 87(2)(b)	

Case Summary

On January 20, 2016, at approximately 7:30 p.m., § 87(2)(b) pulled over his vehicle near the intersection of Sedgewick Avenue and Hall of Fame Terrace, in the Bronx. § 87(2)(b) parked in a legal parking spot, and exited his vehicle to check his tires, since the vehicle felt strange.

As he was checking his rear, passenger's side tire, an unmarked sedan pulled up beside § 87(2)(b)'s parked car. Three plainclothes officers, PO Johnny Chalen, PO Jasen Perez, and PO Nicholas Kourounis of the 46th Precinct Anti-Crime team stared at him from the open window of their vehicle.

§ 87(2)(b) not knowing at the time that they were officers, stated to the officers, "What are you guys looking at?" The officers stepped out of the vehicle, and displayed their shields.

PO Chalen approached § 87(2)(b) and asked him if he was urinating, which § 87(2)(b) denied. PO Chalen then asked for § 87(2)(b)'s identification and § 87(2)(b) provided it. PO Chalen then told § 87(2)(b) to place his hands on his vehicle, with which § 87(2)(b) complied, and PO Chalen frisked § 87(2)(b) (**Allegations A and B**).

PO Chalen asked § 87(2)(b) again if he was urinating and § 87(2)(b) again denied doing so. PO Chalen then gave § 87(2)(b) back his identification and started to go back to his vehicle. § 87(2)(b) stated to the group of officers, "Why are you guys harassing me? I'm just standing here not doing anything." PO Chalen allegedly responded, "Shut the fuck up." (**Allegation C**).

§ 87(2)(b) repeated, "I'm not doing anything, you guys keep harassing me, that's not right." PO Chalen then requested § 87(2)(b)'s identification again and ordered him to return to the driver's seat of the vehicle.

§ 87(2)(b) remained in his vehicle for approximately 30 minutes. § 87(2)(b) was issued two summonses; § 87(2)(b).

Video Footage

A canvass for this location was conducted via Google Maps and no cameras were located near the location. Body Worn Cameras were not assigned to these officers and there was no TARU cameras in the area. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation as an alternative resolution to this complaint.
- A notice of claim inquiry was sent to the New York City Comptroller's office on March 14, 2016. A response to this inquiry will be included in the case file upon its receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by or involving § 87(2)(b)
- PO Johnny Chalen has been a member of the service for seven years and there are no substantiated CCRB allegations against him. § 87(2)(g)

Findings and Recommendations

Allegations Not Pleaded

- Abuse: It is undisputed that the officers approached § 87(2)(b) because they suspected he was urinating. PO Chalen initially used his discretion and warned § 87(2)(b) § 87(2)(b)

§ 87(2)(g)

Allegation A – Abuse of Authority: PO Johnny Chalen stopped § 87(2)(b)

It is undisputed that PO Chalen stopped § 87(2)(b) based on the suspicion that § 87(2)(b) was urinating on a public sidewalk. According to § 87(2)(b) he was checking the tires of his vehicle because he felt as if his vehicle was driving strangely, and he denied ever urinating on the sidewalk. § 87(2)(b) stated that after the initial approach, PO Chalen pointed to a puddle on the ground and stated that the puddle was urination. However, § 87(2)(b) stated that it had been raining that day, and there were residual piles of snow that caused puddles all over the ground and street.

All of the officers were consistent that they observed § 87(2)(b) make a motion towards his waistband, as if zipping up his pants, before the initial approach. PO Chalen also stated that he observed urination on the sidewalk, on § 87(2)(b)'s shoes, and that § 87(2)(b)'s pants were partially undone. PO Kourounis recalled PO Chalen stated to § 87(2)(b) that he saw urine on the ground, however, he was not in a position to see any urine on the ground, as § 87(2)(b)'s vehicle was blocking his full view of § 87(2)(b) and the sidewalk. None of the officers recall that it rained or that there was any residual snow on the streets or sidewalk.

A search of Weather Underground revealed that it had not rained on the incident date as § 87(2)(b) had claimed. However, it did snow three days prior on January 17, 2016 0.6 inches.

New York Administrative code §16-118 (6) prohibits swill, brine, offensive animal matter, noxious liquid or other filthy matter of any kind to be allowed by a person to fall upon or run into any street, or public place, or be taken to or put therein (Board Review 05).

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Abuse of Authority: PO Johnny Chalen frisked § 87(2)(b)

It is undisputed that PO Chalen, PO Kourounis and PO Perez initially approached § 87(2)(b) suspecting that he was urinating. PO Chalen was the contact officer throughout the subsequent interaction with § 87(2)(b) and ultimately wrote him a summons for public urination and public exposure. § 87(2)(b) PO Chalen, PO Kourounis all state that § 87(2)(b) was frisked during this interaction by an officer. PO Perez was the only party that claimed to not recall an officer frisking § 87(2)(b)

§ 87(2)(b) and PO Kourounis stated that PO Chalen frisked § 87(2)(b) while PO Chalen claimed another officer, he did not recall which one, frisked § 87(2)(b) § 87(2)(g)

Although PO Chalen (Board Review 02) stated that he did not decide to frisk § 87(2)(b) he stated that he suspected § 87(2)(b) to have a weapon on him. When asked to explain the basis for this suspicion, PO Chalen stated that § 87(2)(b) put his hands in his pockets during his interaction with § 87(2)(b) and he ordered him to remove his hands from his jacket pockets, with which § 87(2)(b) complied. About a minute later, § 87(2)(b) started moving his hands towards his pockets again, and PO Chalen ordered him to keep his hands away from his pockets. These two movements raised PO Chalen's suspicion that § 87(2)(b) may have had a weapon. PO Chalen stated that there were no additional factors that led him to suspect § 87(2)(b) may have been armed.

PO Kourounis testified that it is normal procedure to frisk any individual that is observed committing a violation on a public sidewalk. PO Kourounis stated that the purpose of the frisk is for the officers' safety, and it did not matter what the violation was for. PO Kourounis confirmed that it is normal procedure to frisk an individual of whom officers were intending to issue a summons for public urination, absent any additional factors. PO Kourounis denied hearing PO Chalen instruct § 87(2)(b) to remove his hands from his pockets, or move them away from his pockets.

PO Perez (Board Review 04) stated that he remained by his driver's side door throughout the interaction and did not hear the interaction between § 87(2)(b) and PO Chalen.

Police must harbor a reasonable suspicion that a person subjected to a frisk is armed and dangerous. Arizona v. Johnson 555 U.S. 323 (2009).

Behavior which is susceptible to innocent as well as culpable interpretation, will not constitute probable cause. Equally, innocuous behavior alone will not generate a founded or reasonable suspicion that a crime is at hand. People v. Debour 40 N.Y.2d 210 (1976) (Board Review 05)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C- Discourtesy: PO Johnny Chalen spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated to the officers as they were leaving that they were just harassing him, and as a result, PO Chalen took back § 87(2)(b)'s identification and issued him a summons. According to § 87(2)(b) when he told the officers that they were harassing him, PO Chalen responded, "Shut the fuck up," before taking back his identification. PO Chalen, PO Perez, and PO Kourounis all denied that PO Chalen or any other officer used any profanity towards § 87(2)(b) including the statement "Shut the fuck up."

§ 87(2)(g)

Squad: 4

Investigator: _____

Signature

Print

Date

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Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date